***THE HON'BLE Mr. JUSTICE L.NARASIMHA REDDY**

**W.P.No.22654 of 2005**

% 23.11.2005

Between:

Kolli Sunitha, D/o.Sarabanda Rao,

Krishna District and others

…Petitioners

A n d

Kakatiya University, rep, by its Registrar,

Warangal

…Respondent

! COUNSEL FOR THE PETITIOENRS: Sri N.Sreedhar Reddy

^ COUNSEL FOR THE RESPONDEN: Sri Deepak Bhattacharjee,
Standing Counsel

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> Head Note:

? CITATIONS:

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**JUDGMENT:**

The petitioners question the action of the respondent in not admitting them into the First Year of M.Sc. (Mathematics) Course in the Colleges, within the jurisdiction of the respondent-Univesity.

The petitioners passed B.Sc. (Mathematics) course from various colleges in Kammam District. The University conducted entrance examinations, for selection of candidates for admission into various post-graduate courses, for the academic year 2005-06. The petitioners appeared in the entrance examination. The 1st petitioner secured 57 marks, and petitioners 2 and 3 secured 53 marks, each, in the entrance examination. They claim to have studied for four consecutive years, preceding the year, in which they appeared in the qualifying examiantion, within the Osmania and Kakatiya University local area. All of them belong to Schedule Caste category.

The petitioners contend that they received the rank cards/intimation slips, indicating that the counselling for admission against reserved categories would be undertaken on 06-08-2005 in the Kakatiya University Campus. They state that they attended the counselling and submitted their bio-data forms, supplied to them. According to the

petitioners, when they appeared before the concerned authorities, together with the necessary certificates, they were not selected and provided admission, on the ground that they cannot be treated as local candidates. It is their case that they are the local candidates, as defined under the Presidential Order, and that even if they were have to be treated as non-locals, they were entitled to be allotted seats as non-local candidates in the S.C category. The petitioners contend that they have approached the University authorities on 09-08-2005, by which time several seats are vacant, and despite the same, they were denied admission.

The Registrar of the University filed counter affidavit in the writ petition. The admission procedure is narrated, in brief. It is stated that the petitioners attended the counselling; they were issued bio-data forms and submitted the same, but did not turn up, when their names were called, repeatedly. It is pleaded that left with no alternative, the counselling was proceeded with, by considering the cases of other candidates. Except this, the respondent did not plead any other ground, for denial of admission to the petitioners. By referring to some of the Rules, incorporated in the Information Brochure, it is pleaded that the petitioners rendered themselves ineligible to be considered at subsequent stages, on account of their absence in the first phase counselling.

Sri N.Sreedhar Reddy, learend counsel for the petitioners submits that, the very fact that the petitioners were furnished the bio-data forms, and they in turn submitted the same on the day of counselling, discloses that the petitioners were very much present during the counselling. He contends that the official, who headed the selection team, flatly refused to consider the cases of the petitioners by observing that they are non-locals. Learned counsel points out that even assuming, but not accepting that the petitioners did not turn up, when their names were called; the University ought to have considered the cases of the petitioners in the next rounds of counsellings, which were undertaken up to the end of September, 2005.

Sri Deepak Bhattacharjee, learned Standing Counsel for the respondent-Universtity submits that the counselling is an elaborate procedure, commencing with the submission of bio-daya forms, till the finalisation of admission, and absence of a candidate, at any stage, would entail in denial of seat. Placing reliance upon clause (6) of the Rules, Regulations and Instructions, contained in the Information Brocture, he contends that the petitioners have forfeited their rights to be considered for admission, on account of their absence, at the relevant point of time. He submits that the occasion to examine the local candidature of the petitioners did not arise, on account of their absence.

In the ordinary course, the admissions to a superior course are to be made on the basis of the performance of candidates in the qualifying examinations. Having regard to the fact that the evaluation of the candidates, at a particular level, is not the same in different Universities, the mechanism of conducting an entrance examination, has been adopted for the past few decades, to ensure uniform assessment. Where the same course is offered by number of institutions, the finalisation of selection would depend upon the option of the candidates. A candidate with a fairly superior rank is prone to be selected for admission in almost all the institutions, but is ultimately to be admitted only in one of the institutions. Resultant vacancies keep on arising, with the shifting of options of the candidates, and thereby, the process of admission becomes a prolonged affair. To overcome this anomoly, the process of counselling has been evolved. The candidates of the respective categories are required to attend the counselling and depending on their options, selections are undertaken against the seats, in all the institutions, simultaneously.

The petitioners appeared in the entrance examination held for the purpose of selection of candidates for admission into First Year of M.Sc. (Mathematics). They secured the marks indicated above. The counselling for un-resered categories was

restricted to those candidates, who obtained 60 marks and above. Since the marks obtained by the petitioners was less than 60, their consideration was restricted to the seats reserved in favour of S.C. candidates. The counselling for that category was scheduled to be held on 06-08-2005.

The petitioners attended the counselling on that date. The respondent also did not dispute the fact that the petitioners submitted their bio-data forms, furnishing the relevant particulars. While the petitioners assert that they went into the Hall, when their names were announced, but were denied admissions on the ground that they are not local candidates, the respondent denies this assertion and states that the petitioners did not turn up at all. It is rather difficult to imagine that the candidates, who have come all the way from Khammam to Warangal, for the exclusive purpose of attending the counselling, submitted their bio-data forms; did not turn up, when their names were called. However, for the present, let it be assumed that the petitioners did not turn up, and thereby, their cases were not considered on 06-08-2005 and be examined, whether they have forfeited their right for admission, once for all, for the current academic year.

Basically, a candidate acquires a right to get admission into the concerned course, on securing the requisite merit. In the ordinary paralance, the concerned authority has to allot the seat to the candidate based upon his merit, and permit him to pay the fees. The counselling was adopted as a mechanism, to avoid delay and duplication of admissions. The dictionary meaning of the word *'Counselling'* ranges from "tendering advise to furnishing informaton; making recommendation or giving suggestion". The counselling by itself, does not confer, or take away, the right of a candidate. It only helps the concerned to know, where exactly he fits in, on the strength of the qualifications, or other characteristics, possessed by him, already. In the very nature of things, it is difficult to state, with an amount of precision, as to where the process of counselling starts, and where it ends, or to identify the crucial

stage of counselling. Once a candidate has offered himself in the counselling, that too, by submission of a written document, in the form of bio-data, he can be said to have been present in the counselling. Whatever may be the consequences of an occasional absence, at the intermediary phases, it cannot be said that the candidate did not participate in the counselling at all.

The sole basis for the respondent in refusing to consider the cases of the petitioners, at the subsequent stages of counselling, that were spread up to 30-09-2005 is paragraph VI (i) of the Information Brochure. It reads as under:

> i. "Candidates who fail to attend counselling session for which he/she is called for will not be considered in the subsequent phases of counselling. Further, a candidate who fails to pay the prescribed fee in time will forego her/his seat and he/she will not be considered for admission in subsequent phases of counselling. However, this rule does not apply to courses where the list of eligible candidates exhausts".

A reading of the same discloses that a candidate, who fails to attend the "counselling session", forfeits his right to be considered at subsequent stages also. Inasmuch as the clause is going to result in forfeiture of right, it has to be construed strictly, and any benefit of doubt must acrue to the candidate. The first sentence of the clause deals with the failure of the candidate to attend the "counselling session", for which he is called. The word '*session'* is compendious in its content. It takes in its fold, not only a sitting of body of persons, but also the continuous series of such meetings. When the University has adopted such an apt and succint term in the relevant provision, it is difficult to give restricted meaning to the whole clause and to interpret the "counselling session" as to mean, the time or occasion, at which the candidate was called, in a public address system.

For all practical purposes, the petitioners have attended the "counselling

session", by submitting their bio-data forms. Even if there existed any justification for not considering their cases, during that particular phase of counselling, on account of their alleged absence, they did not incur the disqualification for being considered at subsequent stages. Therefore, the action taken by the respondent-University in not considering the cases of the petitioners, at subsequent stages of counselling; cannot be sustained. It is not in dispute that several candidates, who are less meritorious than the petitioners, were admitted at subsequent stages. Viewed from this angle, the action of the respondent in denying admission to the petitioners cannot be justified.

The objection raised by the learned Standing Counsel that a substantial portion of the course has been completed; cannot be sustained. On their part, the petitioners approached this Court on 20-10-2005, after waiting till the last phase of admissions, which concluded on 30-09-2005. The petitioners cannot be penalised for the illegality committed by the University.

Therefore, the writ petition is allowed, directing the respondent-University to admit the petitioners into the First Year of M.Sc. (Mathematics) Course, if necessary by creating supernumery seats. There shall be no order as to costs.

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**L. NARASIMHA REDDY, J.**

Dt. –11-2005.

***Note***:

*L.R.copy to be marked.*

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